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DA 93-1161

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 19 1 09 PM '93

In the Matter of) MM Docket No. 93-106
Amendment of Part 74 of the)
Commission's Rules Governing)
Use of the Frequencies in)
the Instructional Television)
Fixed Service)

ORDER GRANTING EXTENSION OF TIME

Adopted: September 27, 1993

Released: September 28, 1993

By the Chief, Mass Media Bureau

1. This action seeks comment on a compromise proposed in connection with the Notice of Proposed Rule Making in MM Docket No. 93-106, in which the Commission proposed to amend Section 74.931(a) and (e)(2), 47 C.F.R. §74.931(a), (e)(2), on an interim basis to permit an Instructional Television Fixed Service (ITFS) licensee to satisfy its minimum formal educational and ITFS programming obligations by "channel loading." Channel loading would permit a multiple-channel ITFS licensee leasing excess capacity to transmit all of the requisite weekly, per-channel programming over fewer than all of its authorized channels. The reply comment period, initially set to expire on July 29, 1993, was extended to August 19, 1993 in response to a request by the Wireless Cable Association International, Inc. (WCA),¹ which indicated the imminence of a compromise agreement in connection with the NPRM. See Order, DA 93-961 (released July 28, 1993).

2. On August 19, 1993, WCA submitted a compromise agreed to by WCA, the National ITFS Association (NIA),² and "ITFS Parties."³ The compromise

¹ WCA's members include licensees in the operation of virtually every wireless cable system in the United States, including ITFS and Multipoint Distribution Service (MDS), as well as programming networks and wireless cable equipment manufacturers.

² NIA is a national association of more than 60 educators in 26 states and the District of Columbia which utilize ITFS to provide educational services to students enrolled in for-credit courses in elementary, secondary, college, post-graduate and career training.

contains five elements, all of which, the parties note, must be adopted in order to remain a supportable agreement. First, the agreement provides that each ITFS licensee will be required to preserve for immediate use or ready recapture at least 40 hours per channel per week for the transmission of ITFS programming. These rights cannot be abridged by contract. Second, each ITFS licensee, according to the compromise, will be required to actually transmit at least the minimum required ITFS programming of 20 hours per week for each channel licensed to it (12 hours per channel per week for the first two years, as currently permitted). However, each ITFS licensee will be permitted to "load" this 20-hour per channel per week programming on fewer than all of the channels for which the ITFS licensee is authorized to operate. All of the minimum amount of programming, the 20 hours per channel per week, even if loaded, must be transmitted on channels licensed to the ITFS licensee. Third, as to satisfaction of the minimum recapture requirement, hours 21 through 40, ITFS licensees are required to retain the right, upon the currently required one-year notice, to transmit multiple programs simultaneously. Transmission of that programming, if the ITFS licensee so elects, may be over any MDS or ITFS channel in the "system."⁴ Fourth, compliance with these terms will establish that the applicant/licensee has established need for its channels under Section 74.902(d), 47 C.F.R. §74.902(d), and will entitle the applicant/licensee to an initial or renewed license. Further, the compromise states, no demerit will be suffered by an applicant proposing channel loading which is also engaged in a comparative selection process. Nor will channel loading or system-wide scheduling have adverse consequences for a renewal application. Finally, this compromise, according to the terms of the agreement, will not serve as a basis for future efforts to seek reallocation of non-loaded ITFS spectrum for commercial use, and the parties to the compromise agree not to seek any such reallocation. Issues not addressed by the compromise include safeguards initially proposed by several educators as necessary to the implementation of channel loading and how such a scheme would be treated in the context of a four-channel waiver request.

3. The Commission has reached no determination as to the proposed compromise. We believe that granting a limited extension of time to file further reply comments on the compromise agreement would serve the public interest. Parties are requested to limit their comments to the elements of the compromise and to any issues directly related to those provisions. A copy of the compromise agreement will be available for public inspection during

³ Although not a formal organization, a group of educators, which filed joint comments to the NPRM, refers to itself as "ITFS Parties." Comprising that group are: American Council on Education, American Association of Community Colleges, Alliance for Higher Education, Arizona Board of Regents for Benefit of the University of Arizona, Board of Regents of the University of Wisconsin System, Iowa Public Broadcasting Board, Regents of the University of New Mexico and Board of Education of the City of Albuquerque, South Carolina Educational Television Commission, State of Wisconsin - Educational Communications Board, and the University of Maine System.

regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

4. Accordingly, IT IS ORDERED, That, pursuant to authority delegated to the Mass Media Bureau under Section 0.283 of the Commission's Rules, 47 C.F.R. §0.283, the time for filing comments in response to the compromise agreement IS EXTENDED to October 28, 1993.

5. For further information concerning this proceeding, contact Anne Lucey, Distribution Services Branch, Mass Media Bureau, (202) 632-6357.

FEDERAL COMMUNICATIONS COMMISSION


Roy J. Stewart
Chief, Mass Media Bureau

⁴ A system is composed of several ITFS and MDS channels whose licensees opt to cooperate to form a system in a given market.